



Re the Application of:

McKENZIE et al.

Serial No.: 09/163,089

Filed: September 29, 1998

Atty. File No.: 4102-1

For: "COMPOSITIONS FOR
IMMUNOTHERAPY AND USES
THEREOF" RECE

Assistant Commissioner for Patents
Washington, D.C. 20231

nts JUL 05 2007
TECH CENTER 1600/2900

Group Art Unit: 1631

Examiner: Ogihara, N.

RESPONSE TO SECOND RESTRICTION REQUIREMENT

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SHERIDAN ROSS P.C.

BY: Franklin Russell

Dear Sir:

This response is directed to the Restriction Requirement having a mailing date of June 5, 2000. This response is believed to be timely and therefore, no fees are enclosed. In the event that fees are due in connection with this response, please debit Deposit Account No. 19-1970.

The Examiner has restricted the claims of the above-identified patent application into three groups as follows. Group I (Claims 1-51) is directed to an immunoregulatory composition which includes isolated mannose receptor-bearing cells and a conjugate comprising an antigen and mannose selected from the group of fully oxidized mannose and partially reduced mannose having aldehydes; to a composition comprising an immunoregulatory mannose receptor-bearing cell population; to an immunoregulatory mannose receptor-bearing cell population derived by a particular method; to a mucin antigen delivery vehicle; and to a method for obtaining such populations. Group II (Claims 52-60) is directed to a method to induce an immune response by administering a population of cells as claimed in Group I. Group III (Claims 61-69) is directed to a therapeutic compound, comprising an antigen conjugated to a carbohydrate polymer comprising partially reduced carbohydrate having aldehyde groups.

Applicants elect the claims of Group I (Claims 1-51), with traverse. Applicants specifically traverse the restriction between Groups I and II, and again submit that the method of Group II requires the use of the immunoregulatory composition of Group I. Therefore, Applicants submit that a thorough search for the subject matter of Group I will be sufficient to examine the claims of Group II. In any event, if the elected claims of Group I are found allowable, Applicants reserve their right to amend the claims of Group II to be commensurate in scope with the product claims of Group I,

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and to request that such amended claims that depend from or otherwise include all the limitations of the allowable product be rejoined and examined for patentability. In re Brouwer, 37 USPQ2d 1663 (Fed. Cir. 1996); In re Ochiai, 37 USPQ2d 1127 (Fed. Cir. 1995).

The Examiner has also required three different species elections for the Group I claims. In general, with regard to the Examiner's species election requirement, Applicants note that such a requirement is primarily, if not solely, intended to facilitate a search by the Examiner. Applicants note that the Examiner is obligated to examine the generic claims and submits that the scope of the claims of the present invention is not limited to the elected species.

First, the Examiner has required an election of a mannose species: (A) oxidized mannose or (B) partially reduced mannose. Applicants elect species (A) oxidized mannose, with traverse. Applicants submit that these subjects are so closely related (e.g., via the common feature of mannose) that a thorough search for mannose with regard to the present invention will be sufficient to examine both species (A) and (B). Therefore, to search both species will not place an undue burden on the Examiner.

Second, the Examiner has required an election of: (A) cells with a biological response modifier and (B) cells without a biological response modifier. Applicants elect species (A) cells with a biological response modifier, with traverse. With regard to the species of with or without a biological modifier, Applicants submit that this species requirement is not proper, because the requirement does not appear to be between two species of a generic claim. Specifically, the claims which recite a biological response modifier are essentially further embodiments of the claims without such modifier. If the Examiner performs a search of the invention including cells with a biological modifier as Applicants have elected, then logically, cells without a biological modifier are simultaneously searched and there is no additional burden on the Examiner.

Third, the Examiner has required an election of an antigen listed in Claim 12. Applicants elect the antigen, MUC1, with traverse. Applicants submit that a search for the generic Claim 1 will be sufficient to examine Claim 12 without the need for the election of species.

In view of the foregoing discussion, Applicants respectfully request that the Examiner reconsider the restriction requirement and species election requirement and withdraw such requirements.

Respectfully submitted,

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Date: June 26, 2000